

CASE NUMBER: 034252/2022

AFFIDAVIT OR AFFIRMATION IN SUPPORT

Document prepared for:
kevin barlow

CASE NAME

Rosemarie Mckinnis Est Of, Kathleen Mckinniss, Carin
Rosado, James Finn Est Of, Geraldine Finn Exr v. Ecohealth
Alliance Inc, Peter Daszak, Janet D Cottingham Aka, Janet
Dasz...

CASE FILING DATE

Oct. 5th, 2022

DOCUMENT FILED DATE

March 1st, 2023

COUNTY

Rockland county, NY

JUDGE

Sherri L Eisenpress

CATEGORY

Torts - Environmental (SARS-COV-2)

STATUS

Active

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

IN RE SARS-CoV-2;

KATHLEEN MCKINNISS, PROPOSED
REPRESENTATIVE OF THE ESTATE OF
ROSEMARIE MCKINNISS, DECEASED; CARIN
ROSADO, individually; and GERALDINE FINN, AS
EXECUTOR OF THE ESTATE OF JAMES FINN,
DECEASED, DAVID CADD00, EXECUTOR OF
ESTATE OF PATRICIA MARIE CADD00,
DECEASED; MELANIE SMITH, EXECUTRIX OF
ESTATE OF ROBERT SENDZISCHEW,
DECEASED; KIMBERLY J. LEWIS, EXECUTRIX
OF ESTATE OF ROBERT F. LEWIS, DECEASED;
LISA PETER, PROPOSED REPRESENTATIVE OF
ESTATE OF PATRICIA A. CHISLETT,
DECEASED; and ROXANNE JONES, PROPOSED
REPRESENTATIVE OF ESTATE OF DALE JONES,
DECEASED,

Plaintiffs,

-against-

ECOHEALTH ALLIANCE, INC., PETER DASZAK,
JANET D. COTTINGHAM a/k/a JANET DASZAK,
RALPH BARIC, W. IAN LIPKIN, and JOHN
AND JANE DOES 1-1000,

Defendants.

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**AFFIDAVIT OF PETER
DASZAK IN SUPPORT
OF MOTION TO DISMISS
THE AMENDED COMPLAINT**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER DASZAK, being duly sworn, deposes and says:

1. I am a Defendant in the above-caption action, the President and Principal Investigator of defendant EcoHealth Alliance, Inc. ("EcoHealth Alliance"), and the devoted husband of defendant Janet Cottingham, a/k/a Janet Daszak ("Dr. Cottingham") (EcoHealth Alliance, myself, and Dr. Cottingham, collectively, "Defendants").

2. I have personal knowledge of the facts set forth in this affidavit, submitted in support of Defendants' motion to dismiss the Complaint dated January 5, 2023 (the "Complaint"), of plaintiffs Kathleen Mckinniss, Proposed Representative of the Estate of Rosemarie Mckinniss, Deceased, Geraldine Finn, as Executor of the Estate of James Finn, Deceased, David Caddoo, Executor Of Estate Of Patricia Marie Caddoo, Deceased, Melanie Smith, Executrix of Estate Of Robert Sendzischew, Deceased, Kimberly J. Lewis, Executrix of Estate of Robert F. Lewis, Deceased, Lisa Peter, Proposed Representative of Estate of Patricia A. Chislett, Deceased, Roxanne Jones, Proposed Representative of Estate of Dale Jones, Deceased, (collectively, the "Estate Plaintiffs"), and Carin Rosado ("Rosado") (together with Estate Plaintiffs, "Plaintiffs"), with prejudice.

3. Dr. Cottingham has never worked as an employee or independent contractor for EcoHealth Alliance. Moreover, Dr. Cottingham has never had or exercised any decision-making authority or control over EcoHealth Alliance, its research projects, its employees, and/or its subcontractors, a/k/a subaward recipients. Dr. Cottingham is and was wholly uninvolved in the research, transactions, and occurrences alleged in the Complaint, and does not owe a duty of care to Plaintiff.

4. In 2014, the National Institutes of Health ("NIH") issued EcoHealth Alliance a five-year award for the Project, *Understanding the Risk of Bat Coronavirus Emergence*, funded under grant 1R01AI110964 (the "Project"). EcoHealth Alliance received additional awards for each subsequent year of the Project, from 2015 through 2019 (collectively, the "Notices of Awards").

5. A true and correct copy of the Notice of Award for the first annual budget period, dated May 27, 2014, is attached hereto as **Exhibit A**.

6. A true and correct copy of the Notice of Award for the second annual budget period, dated June 10, 2015, is attached hereto as **Exhibit B**.

7. A true and correct copy of the Notice of Award for the third annual budget period, dated July 22, 2016, is attached hereto as **Exhibit C**.

8. A true and correct copy of the Notice of Award for the fourth annual budget period, dated May 27, 2014, is attached hereto as **Exhibit D**.

9. A true and correct copy of the Notice of Award for the fifth annual budget period, dated June 18, 2018, is attached hereto as **Exhibit E**.

10. The Notices of Awards for each annual budget period, from 2014 through 2019, included an allocation of funds for subcontract activity between EcoHealth Alliance and the Wuhan Institute of Virology ("WIV"), in Wuhan, China, which had been approved by the NIH. EcoHealth Alliance's research for the Project, and its coordination with subcontractors, including the WIV, was subject to the terms and conditions of the Notices of Awards and the terms and conditions of the NIH Grants Policy Statement, available at: <https://grants.nih.gov/policy/nihgps/index.htm>.

11. Under the terms and conditions of the Notices of Awards, and the terms and conditions of the NIH Grants Policy statement, for each year between 2014 and 2019, EcoHealth Alliance executed an appropriate Subcontract or Consultation Agreement with the WIV that detailed the work that was being subcontracted to the WIV in connection with the Project.

12. A true and correct copy of the Subcontract or Consultation Agreement between EcoHealth Alliance and the WIV for the first annual budget period, dated October 28, 2014, is attached hereto as **Exhibit F**.

13. A true and correct copy of the Subcontract or Consultation Agreement between EcoHealth Alliance and the WIV for the second annual budget period, dated September 1, 2015, is attached hereto as **Exhibit G**.

14. A true and correct copy of the Subcontract or Consultation Agreement between Eco-Health Alliance and the WIV for the third annual budget period, dated August 1, 2016, is attached hereto as **Exhibit H**.

15. A true and correct copy of the Subcontract or Consultation Agreement between Eco-Health Alliance and the WIV for the fourth annual budget period, dated August 1, 2017, is attached hereto as **Exhibit I**.

16. A true and correct copy of the Subcontract or Consultation Agreement between Eco-Health Alliance and the WIV for the fifth annual budget period, dated July 1, 2018, is attached hereto as **Exhibit J**.

17. In 2019, EcoHealth Alliance submitted a renewal application to NIH, through the National Institute of Allergy and Infectious Diseases National Institute ("NIAID"), to extend the Project for an additional five years. On July 24, 2019, NIH reauthorized grant R01AI110964 and issued a Notice of Award that increased EcoHealth Alliance's funding and extended the Project period by an additional five years, through 2024.

18. A true and correct copy of the Notice of Award for the fifth annual budget period, dated August 5, 2019, is attached hereto as **Exhibit K**.

19. As with each prior Notice of Award for the Project, the Notice of Award for the sixth annual budget period included an allocation of funds for subcontract activity between EcoHealth Alliance and the WIV, which proposed work had been reviewed and approved by the NIH.

20. However, on April 19, 2020, EcoHealth Alliance received a letter from Michael S. Lauer, MD, the NIH Deputy Director for Extramural Research, who instructed EcoHealth Alliance not to provide any funds for the Project to the WIV.

21. On April 21, 2020, I responded to Mr. Lauer's letter via email and confirmed that "no funds form [sic] 2R01A1110964-06 have been sent to [the] Wuhan Institute of Virology, nor has any [sub]contract been signed."

22. As requested, EcoHealth Alliance did not provide any grant funds to the WIV following receipt of Mr. Lauer's letter on April 19, 2020.

23. Accordingly, the term of the last Subcontract or Consultation Agreement between EcoHealth Alliance and the WIV, which was for the fifth annual budget period for the Project, ended on May 31, 2019.

WHEREFORE, it is respectfully requested that this Court enter an Order granting my motion and dismissing Plaintiff's Complaint as against me, with prejudice.


PETER DASZAK

Sworn to before me this
23rd day of February, 2023


Notary Public

MEGAN E WALSH
Notary Public - STATE OF NEW YORK
No. 01WA6377560
Qualified in Queens County
Commission Expires 12-30-2026